

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

TERRY GENE CAREY,)
)
Petitioner,)
)
v.) Case No. CIV-05-1495-W
)
WARDEN MILLER, and THE)
ATTORNEY GENERAL OF THE)
STATE OF OKLAHOMA,)
)
Respondents.)

Report and Recommendation

Mr. Terry Carey seeks habeas relief, and the Court should transfer the action to the Northern District of Oklahoma.

The Petitioner is challenging a conviction imposed in Delaware County District Court, which is located in the Northern District of Oklahoma. *See* 28 U.S.C. § 116(a). The Petitioner is incarcerated at the Lawton Correctional Facility, which is located in the Western District of Oklahoma. *See* 28 U.S.C. § 116(c). Under these circumstances, the Northern and Western districts have concurrent jurisdiction over the habeas petition. *See* 28 U.S.C. § 2241(d). However, this Court has discretion to transfer the action to the Northern District of Oklahoma for hearing and determination. *See id.*

The Court should exercise this discretion and transfer the action to the Northern District of Oklahoma. For a habeas petition which challenges the conviction, this district and the Northern District of Oklahoma have shared the view that adjudication should ordinarily take place in the district where the conviction was obtained. This view is based, in part, on

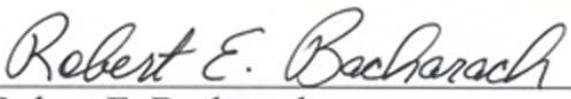
the shared belief that ordinarily the trial records and counsel will be available in the district where the prosecution took place. Under these circumstances, the undersigned recommends transfer of the action to the Northern District of Oklahoma.

The parties are advised of their right to object to this report and recommendation by January 17, 2006. *See* 28 U.S.C. § 636(b); W.D. Okla. LCvR 72.1(a). Any such objection must be filed with the Court Clerk for the United States District Court, Western District of Oklahoma. Failure to timely object would waive Mr. Carey's right to challenge the transfer in a subsequent appeal. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This report and recommendation terminates the referral.

The undersigned directs the Court Clerk to send the report and recommendation to the Petitioner and the Attorney General of Oklahoma. The copy for the Attorney General of Oklahoma is for informational purposes only.

Entered this 28th day of December, 2005.



Robert E. Bacharach
United States Magistrate Judge